

**LETTER OPINION
2010-L-02**

February 11, 2010

The Honorable Lois Delmore
State Representative
714 S 22nd St
Grand Forks, ND 58201-4138

Dear Representative Delmore:

Thank you for your letter requesting my opinion on whether a school district may require a student to successfully complete more than the twenty-two units of high school coursework required by N.D.C.C. § 15.1-21-02.1 for graduation. It is my opinion that the twenty-two units of high school coursework specified in N.D.C.C. § 15.1-21-02.1 is the minimum number of units required before a high school diploma can be issued and not a maximum number. Therefore, a school district may require a student to successfully complete more units of coursework in order to graduate.

ANALYSIS

In 2009, the North Dakota Legislative Assembly amended N.D.C.C. § 15.1-21-02.1 as follows:

15.1-21-02.1. High school graduation - Diploma requirements.

~~Before~~ Except as provided in section 15.1-21-02.3,¹ before a school district, a nonpublic high school, or the center for distance education issues a high school diploma to a student, the student must have successfully completed ~~at least twenty-one~~ the following twenty-two units of high school coursework ~~from the minimum required curriculum offerings established by section 15.1-21-02. Beginning with the 2009-10 school year, the number of units required by this section increases to twenty-two and beginning with the 2011-12 school year, the number of units required by this section increases to twenty-four.~~

¹ Section 15.1-21-02.3, N.D.C.C., provides alternative requirements for certain students.

1. Four units of English language arts from a sequence that includes literature, composition, and speech;
2. Three units of mathematics;
3. Three units of science, including:
 - a. One unit of physical science;
 - b. One unit of biology; and
 - c. (1) One unit of any other science; or
(2) Two one-half units of any other science;
4. Three units of social studies, including:
 - a. One unit of United States history;
 - b. (1) One-half unit of United States government and one-half unit of economics; or
(2) One unit of problems of democracy; and
 - c. One unit or two one-half units of any other social studies, which may include civics, civilization, geography and history, multicultural studies, North Dakota studies, psychology, sociology, and world history;
5. a. One unit of physical education; or
b. One-half unit of physical education and one-half unit of health;
6. Three units of:
 - a. Foreign languages;
 - b. Native American languages;

c. Fine arts; or

d. Career and technical education courses; and

7. Any five additional units.²

Your questions concern the effects of this amendment. Looking only at this section, it could be argued that the Legislature intended to establish both a maximum and a minimum number of units of coursework when it replaced the words “at least twenty-one,” which implies a minimum, with the words “the following twenty-two.” The latter phrase would be interpreted to mean that a high school can only require the specified number of credit hours.³ However, other considerations demonstrate that the Legislature did not intend to prevent school boards from establishing higher standards for graduation than found in N.D.C.C. § 15.1-21-02.1.

The standard to be used when interpreting statutes was recently summarized by the North Dakota Supreme Court:

Our primary goal in statutory construction is to ascertain the intent of the legislature, and we first look to the plain language of the statute and give each word of the statute its ordinary meaning. When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. If, however, the statute is ambiguous or if adherence to the strict letter of the statute would lead to an absurd or ludicrous result, a court may resort to extrinsic aids, such as legislative history, to interpret the statute. A statute is ambiguous if it is susceptible to meanings that are different, but rational. We presume the legislature did not intend an absurd or ludicrous result or unjust consequences, and we construe statutes in a practical manner, giving consideration to the context of the statutes and the purpose for which they were enacted.⁴

The plain language of N.D.C.C. § 15.1-21-02.1 does not specifically indicate that the twenty-two units of high school coursework is a maximum number nor does it state that a high school diploma shall be issued upon successfully completing the twenty-two hours of coursework.

² H.B. 1400, § 15, 2009 N.D. Leg.

³ It is generally presumed that a legislative enactment is intended to change existing law, but we must also consider whether the purpose was to clarify or alter the law. Douville v. Pembina County Water Res. Dist., 612 N.W.2d 270, 274-75 (N.D. 2000).

⁴ State v. Brown, 771 N.W.2d 267, 273 (N.D. 2009), quoting State v. Fasteen, 740 N.W.2d 60 (N.D. 2007) (citations omitted).

To the extent that N.D.C.C. § 15.1-21-02.1 presents ambiguity as to whether the twenty-two units of coursework required for issuance of a high school diploma could also be interpreted as a maximum number, extrinsic aids, such as laws upon the same or similar subjects and the legislative history, may be used in interpreting the statute.⁵

School boards have explicit authority to “[p]rescribe courses of study in addition to those prescribed by the superintendent of public instruction or by law.”⁶ The plain meaning of “prescribe” includes to set down as a rule or guide; enjoin or to establish rules, laws or directions.⁷ Statutes are interpreted in context, and when statutes relate to the same subject matter, they are to be harmonized and given meaningful effect without rendering one or the other useless, if possible.⁸ Here, had the Legislature intended to preclude a school district from adopting graduation standards higher than those found in N.D.C.C. § 15.1-21-02.1, the Legislature logically would have removed or limited school boards’ authority to prescribe courses of study in addition to those prescribed by law.

Further, a review of the legislative history of the 2009 amendment to N.D.C.C. § 15.1-21-02.1 reveals no discussion demonstrating an intent to set a mandatory maximum of coursework for all school districts. Instead, the history includes presentations that indicate that the intent was for section 15.1-21-02.1 to be a minimum statewide standard. First, part of a presentation by the Education Commission on Education Improvement to the House Education Committee, January 13, 2009, summarized proposed HB 1400. The presentation contains a section entitled “HB 1400 Summary Curriculum.”⁹ That section provides in pertinent part:

- Creates a new “Merit” diploma for all high school graduates which sets new state requirements of:
 - Sets 22 units for as [sic] the minimum units needed for graduation.¹⁰

There is also a presentation from the Department of Public Instruction in the legislative history including a chart entitled “NORTH DAKOTA CURRICULUM REQUIREMENTS HIGH SCHOOL GRADUATION REQUIREMENTS.” This chart includes a column labeled “Merit Diploma,” and it states that the total required units are a “Minimum of 22

⁵ N.D.C.C. § 1-02-39(3), (4).

⁶ N.D.C.C. § 15.1-09-33(16).

⁷ The American Heritage Dictionary, 979 (2d coll. ed. 1990).

⁸ Boger v. North Dakota Workers’ Comp. Bureau, 581 N.W.2d 463, 467 (N.D. 1998).

⁹ H.B. 1400, 2009 N.D. Leg., Legislative History, page 764.

¹⁰ Emphasis added.

Units.¹¹ This information from the legislative history is persuasive since it was provided by entities which had a prominent role in the development of recommendations for the education process.

These two documents from the legislative history show that the explanation of the amendments to N.D.C.C. § 15.1-21-02.1 was that it established only a minimum number of units required to graduate, and not also a maximum number. Further, the legislative history does not contain any discussion about restricting the statutory authority of school districts to establish higher coursework requirements for graduation.

Based upon the foregoing it is my opinion that the twenty-two units of high school coursework specified in N.D.C.C. § 15.1-21-02.1 is the minimum number of units required before a high school diploma can be issued and not also a maximum number. Therefore, a school board may require a student to successfully complete more units of coursework to graduate.

Sincerely,

Wayne Stenehjem
Attorney General

mjw/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.¹²

¹¹ H.B. 1400, 2009 N.D. Leg., Legislative History, page 1071 (emphasis added).

¹² See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).